

a

THE ATTORNEY-GENERAL

v.

NG SIAN CHOW & ANOR.

HIGH COURT, SINGAPORE

FA CHUA

b

[DCA NO. 58 OF 1987]

25 NOVEMBER 1988

TORT: *Damages - Negligence - Collision between vehicle - Costs of repair to vehicle and equipment - Incidental benefit of replacing rusty parts - Damages awarded for non-accident and partly accident repairs - No overlapping of special damages.*

c

This was an appeal by both parties against the decision of the Subordinate Court which awarded damages in the sum of \$8,000 for the damage to the appellant/plaintiff's vehicle which was a military truck. It was found that the second defendant who was driving the first defendant's vehicle was liable for the collision between the two vehicles. Some of the repairs to the military vehicle was in respect of "wholly non-accident" repairs and "partly" accident repairs.

d

Held:

[1] In assessing the damages to chattels which had been damaged as a result of negligence, the owner of the chattel is entitled to a complete repair of all the damage done so that it may be used by him as effectually as it would have been if it had not been damaged it and no deduction is to be made if there is necessary betterment due to repairs. The appellant had the incidental benefit of having the rusty parts of the military truck replaced.

e

[2] The costs of repairs to the military truck necessitated by the accident was \$10,187.78. The costs of repairs to the military equipment which was on the military truck was \$4,300. There was no overlapping of damages as the claim was for special damages.

[Appeal allowed. Cross appeal dismissed.]

f

Cases referred to:

The Bernina [1886] 55 LT 781

The Gazelle [1844] 2 Wm Rob 279

For the appellant - Ng Yuen

For the respondents - Anita Fam

g

JUDGMENT**FA Chua J:**

This appeal arose out of an action, in the Subordinate Courts, in which the plaintiff/appellant claimed damages against the defendants/respondents for negligence in respect of an accident between a military truck MID 7334 and the first defendant's vehicle. The trial Court found that the accident was caused solely by the negligence of second defendant, the driver of the first defendant's vehicle, and assessed damages at \$8,000.

h

The plaintiff and the defendants appealed against the award of damages.

At the end of the hearing of the appeal, I allowed the appeal and dismissed the cross appeal of the respondent with costs. Judgment was entered for the appellant in the sum of \$14,487.78 and costs here and below with interest at 8% from the date of the writ to judgment.

i

The plaintiff sued for and on behalf of the Government of Singapore for the sum of \$14,487.78 begin the expenses incurred by the Government in repairing the military truck and the military equipment mounted thereon:

(a) Cost of repairs to the military truck ...	\$10,187.78
(b) Cost of repairs to the military equipment ...	\$ 4,300
	<u>\$14,487.78</u>

The initial estimate of damage (AB21) amounting to \$10,187.78 was prepared by LTC Loh Kum Kim, the Commanding Officer of the Singapore Armed Forces General Supplies and Maintenance Base from an inspection carried out on 15 September 1981, the day after the accident. This initial estimate was then sent to Capt Loke Peng Tam who prepared the tender specification documents which included the description of the works to be carried out on truck MID 7334 (AB12). Capt Loke based AB12 on the initial estimate of damage AB21. Tenders were called for and Sim Bee Engineering quoted the sum of \$15,500 which was accepted.

In respect of the military equipment, tenders were called for and the work was awarded to DFE Pte Ltd. for \$4,300. Order for works and services was put up (AB10).

At the commencement of the trial, the plaintiff amended the sum claimed for the repair to truck MID 7334 from \$15,500 to \$10,187.78.

Gan Boon Jin of the defence engineering at the Ministry of Defence said that the tender specification AB12 was more comprehensive than the initial estimate AB21 as it included damages not resulting from the accident. He said that the truck MID 7334 might have some defects not connected with the accident and the opportunity was taken to repair those defects as well. He referred to AB12 and identified the non-accident repairs and those repairs partly due to the accident. There were 18 items which were “wholly non-accident” repairs and there were 11 items of “partly accident” and “party non-accident” repairs. The costs for partly accident and partly non-accident repairs amounted to \$3,943.75 and those wholly non-accident repairs to \$1,049.23. He estimated that the costs of repairs necessitated by the accident to be \$10,187.78.

The trial Judge in his grounds of decision said:

Further, from the evidence given by the various witnesses it would appear the repair cost was only an estimate and based partly on the accident and non accident matter. As such I was unable to come to any conclusion that the sum of \$10,187.77 was totally for the damages involved in the accident. As Gan Boon Jin (PW8) had said that the sum of \$3,943.75 was for partly accident and non accident and the sum of \$1,049.23 was for wholly non accident matter.

I had disregarded these two sums on grounds that the plaintiff had not mitigated on the damages. The amount of damages would be in the region of \$5,194.79. ...

The same applied to the damage to the equipment (trackway). It had not been established to my satisfaction that the repair was for the accident only. It might well have included non accident matter. I have considered a sum of \$3,000 for the repair of the trackway. Therefore the total amount would be \$5,194.79 plus \$3,000 making a total of \$8,194.79. Taking into consideration on overlapping I awarded the plaintiff the sum of \$8,000. In my view this was fair and reasonable compensation.

The appellant’s ground of appeal was that the trial Judge erred in law and in fact in quantifying the damages suffered by the appellant at \$8,000.

- a** The trial Judge had used AB21 and the figure of \$10,187.78 claimed by the appellant as the starting point of his calculations. He had first deducted the sums of \$3,934.75 and \$1,049.23 from the initial estimate AB21 to arrive at the figure of \$5,194.79 the amount of damages.
- The evidence of Gan Boon Jin was that the 18 items of “wholly non-accident” repairs and the 11 items of “partly accident” and “partly non-accident” repairs were only found in the tenders specifications AB12 but not in the initial estimate AB21. The trial Judge was clearly wrong in deducting these items from the initial estimate AB21.
- b** These 11 items were all bent, twisted, warped or cracked as a result of the accident and also corroded or rotten. According to Gan partly distorted parts could be renewed; the corroded portion could be cut off and welded back; if there was light corrosion that part could be sanded down and anti-corrosion matter be applied.
- c** The measure of damages where chattels have been damaged by conduct which constitutes a tort is the cost of repairs. The owner of the chattel is entitled to a complete repair of all the damage done so that it may be used by him as effectually as it would have been if it had not had damage done to it (see *The Bernina* [1886] 55 LT 781). No deduction is to be made from damages if there is necessary betterment due to repairs (see *The Gazelle* [1844] 2 Wm Rob 279).
- d** In this case, the military truck MID 7334 was fully functional on the road immediately prior to the accident. As a result of the accident the military truck was severely damaged and many parts of the truck had to be replaced in order to make it roadworthy again. The fact that some of those parts which needed replacements were rusty or corroded is immaterial to the cost of replacing them. The appellant has the incidental benefit that the truck when repaired contains new parts in place of the old rusty ones. This arises from the impossibility of effecting repairs without replacing the damaged parts with new ones. Take for example the driver’s cabin which was the most expensive of the 11 items of the partly accident and partly non-accident repairs (see AB12S/No. 4 & 5), the estimated cost of the materials alone was \$2,302.85 (see AB22). It was fully functional prior to the accident notwithstanding it was “badly corroded at various places” which were the result of normal wear and tear.
- e** To deduct this item from the initial estimated cost of repairs is to place a burden on the appellant to bear the cost of repairing the corrosion of an otherwise fully functional vehicle prior to the accident.
- f** The trial Judge had awarded a lower sum of \$3,000 for the damage to the military equipment (the trackway) mounted on the military truck MID 734 when the bill of repairs for the sum was \$4,300. Various parts of the equipment were either bent or misaligned or bent and distorted (see AB10) and clearly those damages were caused solely by the accident. There was no evidence of corrosion and even if there was it is contrary to the principle that no deductions should be made if there was necessary betterment due to repair. The trial Judge had made the deductions on no evidence.
- g** The trial Judge, having arrived at the figures of \$5,194.79 for the military truck and \$3,000 for the military equipment, made a further deduction of \$194.79 to take into consideration “overlapping” of damages. The trial Judge erred in taking into consideration “overlapping” in this case. Deductions for overlapping are normally made in personal injury cases where there will be overlapping of damages. In our case the claim is for special damages for the cost of repairs and there is no question of overlapping of damages.
- h**
- i**

The respondents submitted that the trial Judge erred in awarding substantial damages when the appellant had failed to discharge his burden of proving his claim for damages with exactitude and that the appellant had the damaged vehicle repaired at a cost in excess of its market value. The respondent contended that the trial Judge should have awarded only nominal damages.

a

The respondents gave no evidence to contradict the initial estimate AB21 of the appellant. There was no evidence that AB21 was inaccurate.

b

The respondents had also not produced evidence as to the market value of the military truck MID 7334 at the time of the accident.

Gan Boon Jin gave the book value of the truck as at 1981 as \$8,161. His assessment was computed from the original purchase price of the truck and deducting therefrom 11% depreciation and 3% inflation. The book value, therefore, does not reflect the market value of the truck. No evidence was adduced to show that the market value is equivalent to the book value. The purchase prices of both new and second-hand vehicles had increased dramatically in Singapore since 1969 when the truck was purchased. The book value in 1981 was therefore substantially lower than the market value of the truck.

c

I found that there was no substance in the submissions of the respondents.

d

For these reasons I allowed the appeal of the appellant and dismissed the cross appeal of the respondents.

Also found at [1989] 1 CLJ 601

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